

An attempt to use community empowerment legislation to bring an area of land at the Storr in Skye into local control was rejected by Highland Council in 2017



## Tempting, but mistaken assumptions on land reform



**CALUM MACLEOD**

**The year ahead offers a chance to accelerate the pace and direction of land reform in Scotland, argues CALUM MACLEOD...**

**F**OLLOWING A PERIOD in the political wilderness land reform has commanded an increasingly high profile on Scotland's public policy agenda over the last four years.

Much of that heightened profile has been propelled by legislation in the form of the Community Empowerment (Scotland) Act 2015 and, particularly, the Land Reform (Scotland) Act 2016.

The Community Empowerment Act simplified existing community andcrofting community rights to buy land first introduced in the Land Reform (Scotland) Act 2003 and extended the Community Right to Buy to cover urban as well as rural areas. It introduced a new Community Right to Buy land which is abandoned, neglected or detrimental to the environmental wellbeing of local communities without the necessity of a willing seller.

The Act also introduced a right for communities to make requests to Scottish Ministers, local authorities and a range of other public bodies to own, lease or otherwise use land or buildings they could make better use of.

The Land Reform (Scotland) Act 2016 represents another important step forward in Scotland's land reform journey. Among other things it made provision for the following: a Land Rights and Responsibilities Statement to help inform policy and practice around land issues in Scotland; a register of controlling interests in land; guidance on engaging communities in decisions relating to land which may affect them; a new Community Right to Buy land to further sustainable development, again without the need for a willing seller; and creation of a Scottish Land Commission to review the effectiveness and impact of any law or policy relating to land matters and to make recommendations accordingly, as well as commissioning research and providing information and guidance on relevant issues.

In the wake of both the Community Empowerment and Land Reform Acts it may be tempting for Scotland's parliamentarians to assume that much of the heavy lifting of land reform has been completed. That, after all, is exactly what happened when Parliament passed the Land Reform (Scotland) Act 2003, after which land reform went for a prolonged sabbatical as a policy issue for the remainder of the decade.

Tempting, but a mistaken assumption nonetheless.

In fact, there remains a great deal to do to maintain and deepen land reform's purchase on the public policy agenda as a force for progressive change in Scotland. Much of that work will begin to take shape over the course of 2019.

Some of it is legislative in nature and involves putting flesh on the bones of provisions contained in the Land Reform (Scotland) Act 2016. Part of the work is already under way; last autumn the Scottish Government consulted on draft regulations to underpin its new Register of Persons Holding a Controlled Interest in Land which will be introduced this year to improve land ownership transparency.

Other important legislative work will begin later this year when the Scottish Government introduces regulations to implement the Community Right to Buy to further sustainable development contained in the Land Reform (Scotland) Act 2016.

As with the Community Right to Buy abandoned, neglected or detrimental land, the 'sustainable development' Community Right to Buy does not require a willing seller. Making sure that it is fit for purpose while respecting the human rights of individual property owners and members of the wider community will be a critical task for parliament.

In particular the sustainable development right needs to be framed in a way that will enable

communities to actually use it in practice in appropriate circumstances. It's not yet clear whether the recently introduced 'abandoned etc' right to buy will be effective in that regard, partly because no community has yet applied to use it and partly because of concerns that the legal definitions of "harm" and "communities' "environmental wellbeing" are too tightly drawn to make the right useable in all but the most exceptional circumstances.

There's also work to be done in ensuring that land reform's geographical reach continues to spread beyond its traditional rural heartland of the Highlands and Islands.

The growth in community land ownership has been the most obvious manifestation of land reform since the pioneering 'first wave' of community buyouts — most notably in Assynt, Knoydart and Eigg — in the 1990s.

Data recently published by the Scottish Government indicate that, as of June 2017, there are 562,229 acres in community ownership. 527,252 acres of that total are located in the Highlands and Islands.

In contrast, the Scottish Government estimates that a mere 794 acres of land in the south of Scotland (Dumfries and Galloway and Scottish borders) are in community ownership.

One of the most important factors in helping to nurture the growth of community ownership in the Highlands and Islands was the creation of the Community Land Unit in Highlands and Islands Enterprise in 1997.

In the intervening period it has provided invaluable technical, financial and capacity-building support to community groups in terms of purchasing and managing land and other assets. A comparable service is vital for the south of Scotland to help kick-start an expansion in community ownership there similar to the surge that has occurred in such ownership in the

Highlands and Islands over the last 25 years.

The Scottish Government has a chance to ensure that happens by ensuring that the Bill currently before parliament to create a South of Scotland Enterprise contains explicit provisions to establish a Community Land Unit within the new development agency. Whether or not it chooses to do so will be a telling indicator of the government's commitment towards making community land ownership a matter of importance to the whole of Scotland.

Arguably some of the most promising possibilities for advancing progressive land reform in the coming year lie in connecting seemingly disparate policy threads to move away from the conventional 'silo-mentality' that characterises much of government policy-making in Scotland (as elsewhere).

One area of opportunity concerns the rural repopulation and renewal agenda. This policy area which has been given added urgency by gloomy forecasts, contained in Scottish Government-commissioned research by the James Hutton Institute, of plummeting populations in Scotland's sparsely populated areas by the mid 21st century.

The Planning Bill currently heading towards its final stage in the Scottish Parliament contains amendments — for which Community Land Scotland has advocated — which explicitly encourage consideration of rural repopulation in future planning policy and local development plans by Scottish Ministers and local planning authorities respectively.

Much remains to be done at both policy and practical levels to connect land with other elements of rural renewal such as affordable housing, high quality jobs, digital and other infrastructure that can help retain and grow rural populations in ways that are economically, socially, environmentally and culturally sustainable. Nevertheless, viewing these interconnected issues through

the policy lens of land reform offers a fresh perspective on how to achieve rural renewal objectives that are collectively in all of Scotland's interests.

A further area where land reform and wider policy objectives may intersect more closely in future is that of human rights. An important feature of recent land reform legislation in Scotland has been the introduction of a perspective on the relationship between land rights and human rights that goes beyond focussing only on individuals' property rights.

The Scottish Government made a commitment last month to legislate for an Act of Parliament to provide human rights leadership in Scotland. In turn, that raises intriguing and as yet unexplored possibilities for further alignment of Scotland's evolving human rights and land reform agendas.

Of particular interest is the potential scope for aligning the right of everyone to take part in cultural life, as articulated in Article 15 of the International Covenant on Economic, Social and Cultural Rights, with Scotland's ongoing land reform process.

2019 is not the time to slow Scotland's land reform process down. Rather, the year ahead offers an opportunity to both accelerate its pace and direct the reform process towards hitherto unexplored policy avenues.

The extent to which that opportunity is grasped will largely depend on the appetite of government and parliament to make wider policy connections that enable Scotland's land to fulfil its function as a precious and finite resource to be used in the public interest for the common good. It promises to be an interesting year.

*Dr Calum MacLeod is a sustainable development consultant and policy director for Community Land Scotland. This article is written in a personal capacity.*

*Twitter: CalumMacLeod07*